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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Greg Shannon Levitt, et al.,

10 Plaintiffs,

11 v.

12 Wells Fargo NA,

13 Defendant.
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No. CV-18-00437-TUC-JAS

ORDER

15 Pending before the Court are “Affidavit of Plaintiff in Support of Motion for
16 Temporary Restraining Order or Motion for Preliminary Injunction” (Doc. 1)¹ and Greg
17 Shannon Levitt’s Application for Leave to Proceed In Forma Pauperis (Doc. 2). Based on
18 the below, the Temporary Restraining Order (“TRO”) and the Application for Leave to
19 Proceed In Forma Pauperis shall be denied.

20 Rule 65 of the Federal Rules of Civil Procedure states that a TRO without notice
21 will not be issued unless there are “(A) specific facts in an affidavit or a verified
22 complaint clearly show that immediate and irreparable injury, loss, or damage will result
23 to the movant before the adverse party can be heard in opposition; and (B) the movant’s
24 attorney certifies in writing any efforts made to give notice and the reasons why it should
25 not be required.” Fed. R. Civ. P. 65(b)(1); LRCiv 65.1 (“Ex parte restraining orders shall
26 only issue in accordance with Rule 65, Federal Rules of Civil Procedure.”). The Greg

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28 ¹ As pro se pleadings should be read more liberally, this shall be considered a motion for
a TRO or preliminary injunction. *Hebbe v. Pliler*, 627 F.3d 338, 344 (9th Cir. 2010)
(quoting *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (*per curiam*)).

1 Shannon Levitt's affidavit states that the house in question is scheduled for "Trustee's
2 Foreclosure Sale" on August 29, 2018, at 11:30 a.m., which he believes presents
3 irreparable injury. (Doc. 1 at 3.) It also states that he was aware of Wells Fargo's claim
4 since March 26, 2018. *Id.* at 2. However, he filed nothing until the afternoon before the
5 scheduled sale. *Id.* Further the affidavit includes a certification that he contacted
6 "Nathan" at "Champion" on August 27, 2019, to inquire if the sale could be postponed to
7 allow for arbitration, mediation, or settlement. *Id.* at 5-6. However, the affidavit does not
8 include any indication that Plaintiffs made any efforts to give Defendant notice of the
9 request for TRO or why notice should not be required.

10 The Court will require briefing on the following schedule on the motion for a
11 preliminary injunction. Plaintiffs shall serve this Order and their motion on Defendant
12 within 5 days of this Order being filed. Defendant shall file a response to the motion
13 within 10 days of receiving service of this Order and the motion. Plaintiffs may file a
14 reply within 5 days of the response.

15 As to the "Application for Leave to Proceed In Forma Pauperis," when there are
16 multiple plaintiffs, each plaintiff must file an application to proceed *in forma pauperis*.
17 Plaintiffs must show that they are unable to pay the required court fees. 28 U.S.C.
18 § 1915(a). Without both Plaintiffs' information it is impossible to ascertain the combined
19 ability to pay the prescribed court fees. Therefore, the "Application for Leave to Proceed
20 In Forma Pauperis" is denied. Plaintiffs shall either refile the application or pay the \$400
21 fee within 5 days of this Order being filed.

22 IT IS ORDERED that Plaintiffs' motion for a TRO is denied.

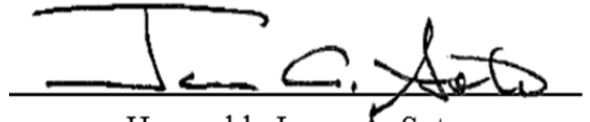
23 IS IF FURTHER ORDERED that Plaintiffs' shall serve this Order and the motion
24 for a preliminary injunction on Defendant within 5 days of this Order being filed.
25 Defendant shall file a response to the motion within 10 days of being served with this
26 Order and the motion. Plaintiffs may file a reply within 5 days of Defendant's response
27 being filed.

28 IT IS FURTHER ORDERED that Plaintiff Greg Shannon Levitt's Application for

1 Leave to Proceed In Forma Pauperis (Doc. 2) is denied with leave to amend within 5 days
2 of this Order being filed. In the alternative, Plaintiffs may pay the \$400 filing fee within 5
3 days of this Order being filed.

4 IT IS FURTHER ORDERED that if Plaintiffs fail to either file the Application to
5 Proceed in District Court Without Prepaying Fees or Costs (Long Form) or pay the \$400
6 filing within 5 days of this Order being filed, the Clerk of the Court shall enter judgment
7 in this case without further notice.

8 Dated this 29th day of August, 2018.

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12 Honorable James A. Soto
13 United States District Judge
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